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The CASE of Elizabeth Bampfylde Widow, and John Bampfylde, Elizabeth Bampfylde; Edmund Bampfylde, and Anne Bampfylde, her Orphan Children, Defendants.

At the Suit of Sir John Rolle, Plaintiff, in a Writ of Error in the House of Peers.

UPon the Marriage of *Thomas Trevelyan* Esq; with *Sarah Drake*, the Daughter of *Sir Francis Drake* Baronet, a Settlement, bearing Date the 20th day of *February, Anno Dom. 1649.* was made of divers Mannors and Lands in the County of *Devon*; and elsewhere, belonging to the Family of *Trevelyan*.

And by that Settlement the Estate was limited to the Issue Male of that Marriage; and in Case that *Thomas Trevelyan* should dye without Issue Male, then there was a Term for years, thereby raised in Trust, to raise 500 *l.* apiece for their Daughters: The Remainder to one *John Trevelyan* a Kinsman.

Thomas and *Sarah* had Issue between them Two Sons and Four Daughters: The Parents died; and afterwards the Sons died without Issue unmarried; and the Four Daughters survived, of whom *Joane* was the Eldest.


The Daughters, after the Death of their Brothers, entred into the Lands by the Consent of their Trustees, demanding their Portions by the Settlement; which was all they had.

Upon this, the aforesaid *John Trevelyan*, who had the next Remainder by the Settlement, agrees with the Trustees for the Daughters, That if he might have the present Possession of the Lands, he would then pay the Daughters their 500 *l.* apiece: And, in pursuance of this Agreement, he had the Possession given up unto him; and the Three Younger Daughters (being Married) had their Portions paid accordingly.

But *Joane*, the Eldest Daughter, not being Married, she only received some Interest, but her Principal Sum of 500 *l.* was never paid; wherefore she, by her last Will, expressly Bequeathed this Money unto her near Relation *Lewis Bampfylde* Esq; deceased, Brother to *Sir Coplestone Bampfylde*, and late Husband of the Widow, and Father of the Poor Children Defendants.

And by this Will the Defendants have a good Title to this 500 *l.* given by *Joane* as aforesaid, and is indeed all they have, or can Claim in the World, and without it must be in a Miserable Necessitous Condition.

John Trevelyan having thus gain'd the Possession, he Sells the greatest part of these Lands to *Sir John Rolle*, the Plaintiff: And the said Provision for Portions appearing in the Settlement under which *Sir John Rolle* bought, he Secured himself against this Incumbrance of the Daughters Portions.

 *Note, It was not possible that Sir John Rolle could be Ignorant of this Charge upon the Lands for the Daughters Portions, because John Trevelyan (from whom Sir John Rolle Purchased) had no Pretence of Title to these Lands but by this Settlement, wherein this Charge did appear; for without this, the Daughters must have Inherited the Whole Estate as Right Heirs at Law.*

After this Purchase *John Trevelyan* and his Posterity died Insolvent, and no Security was ever given for Payment of the 500 *l.* to *Joane*.

Wherefore the Defendants (who are the Representatives of, and Claim under the aforesaid Legatee of *Joane*) procured (by Advice of Council) Letters of Administration to the Surviving Trustee; and thereby made Title to the Term of years which was by the Settlement aforesaid limited in Trust to raise the Daughters Portions, as aforesaid, as the only Means whereby to Recover this 500 *l.*

And hereupon Declarations in Ejectment were delivered in the year 1696. to *Sir John Rolle*, and also to one *Mr. Newell*, who had likewise Purchased part of the Lands: And the Cause was brought to Tryal at the Assizes at *Exeter*, when a Reference was Proposed and Submitted to, because we desired nothing more than the 500 *l.* and were not able to Contend long with *Sir John Rolle*.

But when this was done, the then Defendants *Sir John Rolle* and *Mr. Newell*, could never be brought to attend or bring the Matter before the Referrees.

By which Means those Poor People were delayed and almost wearied out, and therefore were advised to bring it on again to Tryal, which accordingly they did.

But at the said Tryal no Person would appear for *Mr. Newell*; by which Trick they thought to have prevented the going on of the Tryal against *Sir John Rolle*; but to avoid the Artifice, we entred a *Nolle Prosequi* there against *Newell* before *Mr. Justice Powell*: And the Judge proceeded to Try the Cause against *Sir John Rolle*; and *Sir John Rolle* made Defence, and insisted upon the Statute of Limitations as a Bar, and thereupon prest extreamly to have a Special Verdict, meerly to delay and weary out the Defendants; for the only Question upon the Special Verdict was, Whether the Entry of *John Trevelyan*, by the Consent of the Trustee for the Daughters, upon the Agreement aforesaid, was not sufficient to prevent a Bar by the Statute of Limitations.

But after this was obtained, *Sir John Rolle* would not Join in the Drawing up this Special Verdict, neither would his Council Argue the pretended Point of Law, it being so plain against him.

But to weary out these Poor Defendants, it was then pretended, that the Judge, which was *Mr. Justice Powell*, could not go on to Try the Cause against *Sir John Rolle* upon the *Nolle Prosequi* entred against *Newell*: But the Court of *King's-Bench* agreed with *Mr. Justice Powell's* Opinion, that he might receive the *Nolle Prosequi* there as to *Newell*, and go on to Try the Cause against *Sir John Rolle*: And so the Poor Defendants had Judgment for them against *Sir John Rolle*.

Upon which Judgment this Writ of Error is brought; which is of no less Consequence to the Defendants than all the Support they have in this World: And they Humbly Conceive the Judgment is not only agreeable to the Rules of Law, but are sure there is not any Authority or President in the Law against it: And upon all this Fact 'tis Humbly Submitted whether the Equity be not also with the Judgment.

Wherefore 'tis Humbly hoped that the Judgment shall be Affirmed.